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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,554	03/29/2007	Michael Fehring	095309.57675US	4965

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EXAMINER

CULBRETH, ERIC D

ART UNIT	PAPER NUMBER
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3616

MAIL DATE	DELIVERY MODE
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09/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/578,554

Applicant(s)

FEHRING ET AL.

Examiner

Eric Culbreth

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/29/07</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the traction means in sections and in a store and, for that matter, wound in a store (claim 8), the auxiliary drive of a spring store and pyrotechnic elements (claims 10-11) and sensors (claim 12) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities:

- a. Paragraph [0003], lines 2-6 are an incomplete sentence.
- b. In paragraph [0010], line 1 "a" should precede "particularly".
- c. In paragraph [0022], line 2 "7" should be "8".

Appropriate correction is required.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is no support in the specification for the traction means being in sections nor in a store nor wound into a store (claim 8), an auxiliary drive moving the cushion in the occupant direction in the form of a spring store or pyrotechnic elements (claims 10-11), nor the auxiliary drive coupled to sensors detecting the vehicle state or surroundings (claim 12).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. In claim 1, line 5 there is no antecedent basis for "the vehicle".

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- b. In claim 3, line 4 "and/or" is indefinite, failing to positively define structure.
- c. In claim 4, line 4 "and/or" is indefinite, failing to positively define structure (i.e., a better recitation might be "at least one of cushion elements and foam elements").
- d. In claim 4, line 4 also, there is no antecedent basis for "the cushion elements and/or foam elements", as those were recited in claim 3 and claim 4 depends from claim 1.
- e. In claim 5, line 4, "and/or" is indefinite for reasons above and there is no antecedent basis for "the cushion elements and/or the foam elements", as those were recited in claims 3 and 4 and claim 5 depends from claim 1.
- f. Claim 5, lines 4-5 are not accurate, as the armrests, not the cushion elements or foam elements, are guided by linear guides (this is especially inaccurate of the foam elements, as they do not even move).
- g. Regarding claims 7-8, the word "means" is preceded by the word(s) "traction" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).
- h. Also, in claim 7, line 5, "comprises" should be "comprised".
- i. Regarding claim 8, it is not clear how the traction means can be stored "in sections" (line 4).

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j. In claim 10, line 5 there is no antecedent basis for "the direction" nor "the occupant position".

k. In claim 12, line 4 "the vehicle-mounted drive the auxiliary drive" is unclear.

l. In claim 12, lines 4-5 "the auxiliary drive coupled to sensors" is unclear.

m. Claim 15, line 1 recites the invention as a method, but lists no method or steps.

n. In claim 15, line 4 "imminent" is misspelled.

o. In claim 15, line 4 "[l]mmminent impact accident" is not clear.

p. In claim 15, line 8, there is no antecedent basis for "the direction of the occupant position".

q. In claim 13, line 5 "a deployed position" is a double inclusion of the deployed position already recited in claim 1.

Generally, the claims are replete with instances of indefiniteness and should be carefully reviewed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-6, 10-13 and 15 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent 10043290C1 (cited by applicant) in view of Browne et al US 20030001372A1.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify German '290's cushion elements 4 in Figure 9 driven by pyrotechnic 5 (see English translation, where 7 is a pyrotechnic drive for actuator 5) to include an electric motor substituted for the pyrotechnic in view of Browne et al's teaching at paragraph [0033] that an electric motor is preferable to a pneumatic (pyrotechnic) drive for a powered safety device such as a movable knee cushion, which is the kind of cushion included in German '290's invention in Figure 10 (claims 1 and 15). In Figure 9 of German '290, the cushion elements 4 are in a door and at least cushion elements 4 are arranged in series (claims 2-3; claim 3 does not positively recite additional foam elements). In German '290, force limiters 3 allow the cushion elements to be displaced with respect to one another; in fact, claim 4 is indefinite because there is

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no antecedent basis for the cushion elements or foam elements (those were recited in claim 3 and claim 4 depends from claim 1) and claim 4 does not positively include foam elements ("and/or foam elements). Regarding claim 5, in German '290, the upper wall of the chute in Figures 8-9 against which the top cushion 4 rests is a linear guide. In the combination the cushion elements 4 can be locked in a deployed position by Browne et al's worm gear (i.e., a worm gear locks the part it is moving whenever the motor stops) (claim 6). The recitation in claims 10-11 regarding an auxiliary drive is so indefinite that the combination meets the positive limitations of the claim (i.e., no disclosure of an auxiliary drive in the disclosure or drawings). At any rate, as German '290 teaches a pyrotechnic drive, include pyrotechnic elements in addition to the electric motor in the combination would be obvious as an ancillary feature, as it would yield predictable results (moving the cushions quickly). In the combination Browne et al teaches sensors coupled to the drive for detecting imminent impact (paragraph [0005], which would detect one of the vehicle's state and surroundings (claims 12 and 15). In the combination Browne et al's knee bolster is extendable and retractable (paragraph [0003]), the reversing system in the electric motor being a return element moving at least one cushion element from a deployed position to a rest position (claim 13).

Allowable Subject Matter

9. Claims 7-9 and 14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Nohr et al US005794975, Brantman et al US005695242A, and Behr et al US4951963 are cited to show deployable cushions.

Translations from espace/epo are also provided for DE10043290, DE2232276, FR2744408 and DE2856437 (the foreign references cited on the 3/29/07 information disclosure statement).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Culbreth whose telephone number is 571/272-6668. The examiner can normally be reached on Monday-Thursday, 9:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571/272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Eric Culbreth
Primary Examiner
Art Unit 3616

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